



## ABAC Adjudication Panel Determination No 50/24

**Products:** Maxo Relaxo DDH Hazy Pale and All Juice DDH Hazy DIPA  
**Company:** Future Brewing  
**Media:** Packaging and Website  
**Date of decision:** 3 May 2024  
**Panelists:** Professor The Hon Michael Lavarch (Chief Adjudicator)  
Professor Richard Mattick  
Ms Debra Richards

### Introduction

1. This determination by the ABAC Adjudication Panel (“the Panel”) arises from a complaint received on 25 March 2024 in relation to the packaging and website marketing of two Future Brewing (“the Company”) products, being Maxo Relaxo DDH Hazy Pale and All Juice DDH Hazy DIPA (“the products”).
2. Alcohol marketing in Australia is subject to an amalgam of laws and codes of practice that regulate and guide the content and, to some extent, the placement of marketing. Given the mix of government and industry influences and requirements in place, it is accurate to describe the regime applying to alcohol marketing as quasi-regulation. The most important provisions applying to alcohol marketing are found in:
  - (a) Commonwealth and State laws:
    - Australian Consumer Law – which applies to the marketing of all products or services, and lays down baseline requirements, such as that marketing must not be deceptive or misleading;
    - legislation administered by the Australian Communications and Media Authority – which goes to the endorsement of industry codes that place restrictions on alcohol advertising on free to air television;
    - State liquor licensing laws – which regulate the retail and wholesale sale of alcohol, and contain some provisions dealing with alcohol marketing;

(b) Industry codes of practice:

- AANA Code of Ethics – which provides a generic code of good marketing practice for most products and services, including alcohol;
  - ABAC Responsible Alcohol Marketing Code (“ABAC Code”) – which is an alcohol-specific code of good marketing practice;
  - certain broadcast codes, notably the Commercial Television Industry Code of Practice – which restricts when advertisements for alcohol beverages may be broadcast;
  - Outdoor Media Association Code of Ethics and Policies – which place restrictions on the location of alcohol advertisements on outdoor sites such as billboards.
3. The codes go either to the issue of the placement of alcohol marketing, the content of alcohol marketing or deal with both matters. The ABAC deals with both the placement of marketing i.e. where the marketing was located or the medium by which it was accessed and the content of the marketing irrespective of where the marketing was placed. The ABAC scheme requires alcohol beverage marketers to comply with placement requirements in other codes as well as meet the standards contained in the ABAC.
4. For ease of public access, Ad Standards provides a common entry point for alcohol marketing complaints. Upon a complaint being received by the Ad Standards, a copy of the complaint is supplied to the Chief Adjudicator of the ABAC.
5. The complaint is independently assessed by the Chief Adjudicator and Ad Standards and streamed into the complaint process that matches the nature of the issues raised in the complaint. On some occasions, a single complaint may lead to decisions by both the Ad Standards Community Panel under the AANA Code of Ethics and the ABAC Panel under the ABAC if issues under both Codes are raised.
6. The complaint raises concerns under the ABAC Code and accordingly is within the Panel’s jurisdiction.

### **The Complaint Timeline**

7. The complaint was received on 25 March 2024.
8. The Panel endeavours to determine complaints within 30 business days of receipt of the complaint, but this timeline is dependent on the supply of

materials and the availability of Panel members. This determination was made within the target timeframes.

## Pre-vetting Advice


9. A component of the ABAC Scheme is an advice service by which an alcohol marketer can obtain an independent opinion of a proposed alcohol marketing communication against the ABAC standards prior to public release. Pre-vetting advice is separate from the complaint process and does not bind the Panel but represents best practice on behalf of alcohol marketers. Pre-vetting approval was not obtained for the marketing.

## The Marketing

10. The complaint relates to the packaging and a website entry for Maxo Relaxo DDH Hazy Pale and All Juice DDH Hazy DIPA:

HOME TAPROOM SHOP CONTACT

CART (0)



Maxo Relaxo - DDH Hazy Pale Ale (4 Pack)

\$44.00

Quantity: - 1 +

SOLD OUT

Buy with [shop Pay](#)

Join us for a tropical holiday as we enter maximum relaxation sip by sip with this soft and juicy pale packed full of some of our most loved Freestyle NZ hops. Tropical and citrusy with white wine, passion fruit and mojito vibes. This is the beer that all of us at Future love to drink. If you liked DDH Daily Juice and Just Juice then you're going to love Maxo Relaxo!

5.5% ABV • 440mL

**Shipping Information**

In order to keep the beer as fresh as possible and avoid it sitting in warm temperatures at shipping depots over weekends, we only ship on Mondays. Where Monday is a public holiday we will ship on Tuesday. This allows your beer to have a chance to arrive before the weekend and minimizes the time it is out of refrigeration.

Shipping times vary depending on your location but average 2-8 days. If you do not receive your beer within 10 business days, please let us know via email to [hellofuture@futurebrewing.com.au](mailto:hellofuture@futurebrewing.com.au)

We ship to NSW, VIC, SA, ACT, TAS & QLD. We do not currently ship to WA or the NT. We do not accept international orders.



SOLD OUT

Buy with **shop Pay**

Join us for a tropical holiday as we enter maximum relaxation sip by sip with this soft and juicy pale packed full of some of our most loved Freestyle NZ hops. Tropical and citrusy with white wine, passion fruit and mojito vibes. This is the beer that all of us at Future love to drink. If you liked DDH Daily Juice and Just Juice then you're going to love Maxo Relaxo!

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We ship to NSW, VIC, SA, ACT, TAS & QLD. We do not currently ship to WA or the NT. We do not accept international orders.

Beer must be signed for by a person over 18 years at the time of delivery. If no one is at the delivery address to receive your parcel it will be returned to the depot and will need to be picked up and signed for by a person over 18 years of age.

We support the responsible service of alcohol across Australia. Under the Liquor Act 2007 (NSW), it is against the law to sell or supply alcohol to, or to obtain alcohol on behalf of, a person under the age of 18 years. Similar laws against selling or supplying alcohol to minors apply across Australia.

Keep it cold, put it in the refrigerator as soon as you receive it!

Enjoy! It's just beer - don't take it too seriously :)





### DDH All Juice - DDH Hazy DIPA (4 Pack)

\$56.00

Quantity:

- 1 +

ADD TO CART

Buy with **shop** Pay

More payment options

This is our biggest and juiciest beer yet! This DDH DIPA is layered with absurd amounts of Citra, Mosaic and Nelson. It's got a thick and creamy body and is bursting with notes of sweet citrus, mango, pineapple, passion fruit and vanilla. Mmm so juicy and smooth!

8.2% ABV • 440mL

Hops: Citra, Citra Cryo, Mosaic, Mosaic Cryo & Nelson Sauvignon SubZero Hop Kief

#### Shipping Information

In order to keep the beer as fresh as possible and avoid it sitting in warm temperatures at shipping depots over weekends, we only ship on Mondays. Where Monday is a public holiday we will ship on Tuesday. This allows your beer to have a chance to arrive before the weekend and minimizes the time it is out of refrigeration.

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## Complaint

- The complainant objects to the marketing as follows:

### **Maxo Relaxo**

- Violates 3(c)(i) by claiming it improves mood. This is done through its name "maxo relaxo," as well as the spiel on the website, "Join us for a tropical holiday as we enter maximum relaxation sip by sip."*

- *Violates 3(d) by depicting a swimming pool on the can.*

**All Juice**

- *"All Juice" does not clearly label itself as a beer in a way that's obvious to a minor. "DDH Hazy DIPA" and "ABV" would not be understood. The drink is emphatically all juice. The text is brightly coloured, and visually "pops" against a dark background. This visual effect is similar to that used by Monster energy drinks.*

**The ABAC Code**

15. Part 3 of the Code provides that an Alcohol Marketing Communication must NOT:

|         |   |
|---------|---|
| (b)(i)  | <p>have Strong or Evident Appeal to Minors, in particular;</p> <p>(A) specifically target Minors;</p> <p>(B) have a particular attractiveness for a Minor beyond the general attractiveness it has for an Adult;</p> <p>(C) use imagery, designs, motifs, language, activities, interactive games, animations or cartoon characters that are likely to appeal strongly to Minors;</p> <p>(D) create confusion with confectionery, soft drinks or other similar products, such that the marketing communication is likely to appeal strongly to Minors; or</p> <p>(E) use brand identification, including logos, on clothing, toys or other merchandise for use primarily by Minors.</p> |
| (c)(i)  | <p>suggest that the consumption or presence of Alcohol may cause or contribute to an improvement in mood or environment;</p>  |
| (c)(iv) | <p>suggest that the consumption of Alcohol offers any therapeutic or health (including mental health) benefit, is needed to relax, or helps overcome problems or adversity.</p>   |
| (d)     | <p>show (visibly, audibly or by direct implication) the consumption of Alcohol before or during any activity that, for safety reasons, requires a high degree of alertness or physical coordination, such as the control of a motor vehicle, boat or machinery or swimming.</p>   |

## The Company Response

16. The Company responded to the complaint by letter emailed on 22 April 2024. Its primary comments were:
  - *Even though the claims are quite peculiar and surprising, we won't bother to take the time to submit a reply since these beers are nearly sold out already anyway.*

## The Panel's View

### Introduction

17. Future Brewing is a microbrewery located in the Sydney suburb of St Peters. Initially commencing in 2020, the Company opened a taproom in September 2023 that features a regularly updated array of craft beers rather than an ongoing core range. Two beers released by the Company have been a double dry-hopped hazy pale ale branded as "Maxo Relaxo" and a double dry-hopped Indian pale ale branded as "All Juice". The packaging (can design) and website descriptions of these products have drawn the complaint.
18. In relation to Maxo Relaxo, the argument is that the brand name and the can design suggests the product will improve a person's mood. It is also contended that by depicting an image of a swimming pool on the can, the product suggests the consumption of the product while swimming. Further the Company's website description of the product is argued to suggest the product will improve a person's mood.
19. In relation to All Juice, the complainant argues the can does not establish the product is actually an alcohol product and adopts a design that will strongly appeal to minors.
20. The complainant's concerns enliven the consistency of the marketing with several ABAC standards requiring that an alcohol marketing communication must not:
  - have strong or evident appeal to minors – Part 3 (b)(i);
  - suggest that the consumption or presence of Alcohol may cause or contribute to an improvement in mood or environment – Part 3 (c)(i);
  - suggest that the consumption of Alcohol offers any therapeutic or health (including mental health) benefit, is needed to relax, or helps overcome problems or adversity – Part 3 (c)(iv); and
  - show the consumption of Alcohol before or during any activity that, for safety reasons, requires a high degree of alertness or physical coordination, such as swimming – Part 3 (d).

21. The Company is not a signatory to the ABAC Scheme and has not made a prior commitment to market its products consistently with the standards of good marketing practice contained in the Code. While it has acknowledged the complaint, it has declined the opportunity to engage substantively on whether the marketing breaches the relevant standards beyond observing that the complaint is 'peculiar and surprising'. It is noted the products are almost sold out.
22. The balance of the determination is structured as follows:
  - responsibility towards minors - general considerations
  - packaging - general considerations
  - applying Code standards
  - the branding, packaging and marketing of Maxo Relaxo
  - the branding and packaging of All Juice
  - conclusion.

#### **Responsibility toward minors – general considerations**

23. Part 3 (b)(i) of the Code provides that an alcohol marketing communication must not have strong or evident appeal to minors. The standard might be breached if the marketing:
  - specifically targets minors;
  - has a particular attractiveness for a minor beyond the general attractiveness it has for an adult;
  - uses imagery, designs, motifs, language, activities, interactive games, animations or cartoon characters that are likely to appeal strongly to minors; and
  - creates confusion with confectionery, soft drinks or other similar products, such that the marketing communication is likely to appeal strongly to minors.
24. The Panel has considered the Part 3 (b) standard on many past occasions. While each marketing communication must always be assessed individually, some characteristics within marketing material which may make it strongly appealing to minors include:
  - the use of bright, playful, and contrasting colours;



- aspirational themes that appeal to minors wishing to feel older or fit into an older group;
- the illusion of a smooth transition from non-alcoholic to alcoholic beverages;
- creation of a relatable environment by use of images and surroundings commonly frequented by minors;
- depiction of activities or products typically undertaken or used by minors;
- language and methods of expression used more by minors than adults;
- inclusion of popular personalities of evident appeal to minors at the time of the marketing (personalities popular to the youth of previous generations will generally not have strong current appeal to minors);
- style of humour relating to the stage of life of a minor (as opposed to humour more probably appealing to adults); and
- use of a music genre and artists featuring in youth culture.

25. It should be noted that only some of these characteristics are likely to be present in a specific marketing communication and the presence of one or even more of the characteristics does not necessarily mean that the marketing item will have strong or evident appeal to minors. It is the overall impact of the marketing communication rather than an individual element that shapes how a reasonable person will understand the item.

26. Product packaging can give rise to strong appeal to minors if it creates confusion with confectionery or a soft drink. Confusion with a soft drink might occur if:

- the packaging fails to clearly identify the product as an alcohol beverage through the use of an alcohol term like beer, ale, vodka, style of wine etc or reliance is made of more subtle alcohol references or terms understood by regular adult drinkers but less likely to be understood by minors e.g. IPA, NEIPA;
- the packaging has a visual design that resembles a soft drink such as the display of fruit images, bright block colours and the use of a font style or iconography found typically on soft drinks or fruit juices;
- the use of terms commonly associated with a soft drink or fruit juice e.g. orange, lemon, blueberry, pop, smash etc; and
- the type of physical package used and whether this is similar to that used by soft drinks or fruit juices e.g. prima style juice box.

## **Packaging – general considerations**

27. When assessing a design of a can or bottle, it cannot be expected that a reasonable person will turn the container around the full 360 degrees and study it in fine detail. Rather it is the front of the can/bottle that will be most influential in how the person will probably understand the packaging and impressions will be most strongly shaped by larger font writing and the predominant colours and design features.
28. It is important to note that the ABAC Scheme and the Code is directed at the marketing of alcohol beverages. ABAC does not regulate physical beverages, namely the taste, colour, viscosity or alcohol to volume strength. The flavour profile of a product however will be relevant in as much as the flavour is referenced and described in the marketing communication. The Part 3 (b) standard assumes, by reference to confusion with soft drinks and confectionery as an example of when a breach of the standard might occur, that soft drinks and confectionery have appeal to minors.
29. It should also be noted that the ABAC standard does not create a freestanding requirement that the branding and packaging unambiguously identify a product as being an alcohol beverage. Rather a failure to do so and the potential for product packaging to be confused with a soft drink could contribute to the packaging having a strong appeal to minors.

## **Applying Code Standards**

30. The consistency of a marketing communication with a Code standard is assessed from the probable understanding of the marketing item by a reasonable person. This is the test which embeds the interpretation of the Code with the notion of meeting community standards as a reasonable person holds the attitudes, opinions, values and life experience shared by most people in the community.
31. If a marketing communication could be understood as having several possible meanings, it is the most probable interpretation which is to be preferred over a possible but less likely understanding of the marketing message.

## **Maxo Relaxo DDH Hazy Pale**

32. The complainant refers to the Company's website and its entry on Maxo Relaxo. The website shows a picture of the product can and in one shot next to a full glass of the product. The accompanying text reads in part 'Join us for a tropical holiday as we enter maximum relaxation sip by sip with this soft and juicy pale packed full of some of our most loved Freestyle NZ hops'.
33. Maxo Relaxo is packaged in a 440ml can. The top two thirds of the front of the can shows a yellow sun radiating white sunbeams against a pale blue sky. Two

deck chairs are depicted as if next to a swimming pool. The bottom third is a deeper blue colour as if the water in the pool. The product name is in this third of the can in yellow lettering, with the letters appearing slightly offset as if floating in the pool. The descriptor 'DDH Hazy Pale' and 5.55 ABV are at the bottom of the can. The rear contains more detailed product information in black printing on a white panel.

34. The complainant contends that the can packaging together with the website description suggests the product will lead to an improvement in mood. Part 3 (c)(i) provides that a marketing communication must not suggest the presence of alcohol may cause or contribute to an improvement in mood. Part 3 (c)(iv) provides that marketing must not suggest that the consumption of alcohol is needed to relax.
35. The key concept in these standards is causation. It is permitted to place or associate an alcohol product with a relaxed and enjoyable setting. What cannot be suggested is that alcohol is a transformative agent that moves a mood from state A to an improved state B or that alcohol is 'needed' for a person to be relaxed.
36. For instance, it is not permitted to show alcohol moving a mood from bored to engaged, or the use of alcohol shifting a person's mood from sad to happy. Generally, marketing that breaches the standard will convey a journey where an initial environment is depicted and then this environment improves because of the use or introduction of alcohol.
37. The Panel believes on balance that the website entry does breach the Part 3 (c)(i) standard. The description of entering 'maximum relaxation sip by sip' would probably be understood as suggesting the consumption of the product does move a mood from less relaxed to more relaxed. It is less likely the description would be seen as claiming that alcohol is 'needed' for relaxation, but rather that its use would improve a person's sense of mood and well being.
38. The Panel does not believe the brand name and can design in isolation from the accompanying text breaches the ABAC standards. The packaging depicts a poolside setting and the product name. A reasonable person is not likely to take from this alone that journey has occurred or a mood improved.

### **All Juice DDH Hazy IPA**

39. 'All Juice' is packaged in a can with a black background. At the top of the can is the letter 'F.' in white font. The centre front of the can is taken up with the words 'All Juice', in larger font than other information provided, and in orange and purple colour, and outlined with yellow. At the bottom of the can in green font are the words "DDH HAZY DIPA", below which in white font are '8.2% ABV' and '440ml'. The rear contains more detailed product information in black printing on a white panel.

40. The complainant submitted that the can design is strongly appealing to minors through a combination of not clearly identifying the product being alcoholic, the all juice name and the visual design being arresting and eye-catching.
41. The Company's choice in brand name and can design does illustrate a tension between using terms and descriptors likely familiar to craft beer drinkers but which cannot be assumed to be widely understood in the community as a whole. 'Juice' for instance is intended by the Company to be a descriptor of a hoppy style beer, but in general usage 'juice' is not a beverage term associated with alcohol as such. Further the descriptor 'DDH Hazy DIPA' would not be a cue of the alcoholic nature of the product to a majority of the community.
42. It is accepted that the Company had no intention to create a brand or packaging design that would appeal to minors, but it must be acknowledged that the points made by the complainant as to the potential confusion as to the alcoholic nature of the product were fairly made.
43. That said, there is no ABAC requirement that product packaging unambiguously identify a product as being an alcohol beverage. The principal purpose of the Part 3 (b) standard is not to avoid marketing being mistaken by minors but minors being drawn to the product because the marketing is strongly appealing.
44. On balance, the Panel does not believe the packaging breaches the Part 3 (b)(i) standard. In reaching this conclusion the Panel noted:
  - while the packaging could do more to establish the alcoholic nature of the product, the overall design does not resemble well known soft drinks and is unlikely to be confused with a soft drink as such;
  - in particular, fruit juice products directed or popular with minors do not come in cans but are packaged in bottles or prima packs etc and it is unlikely the product would be confused with a fruit juice;
  - the colour scheme for the can is predominantly dark and mature in look;
  - the design features are minimalist and sleek and not regarded as familiar to those employed on products directed or familiar to minors; and
  - taken as a whole, a reasonable person would likely regard the packaging as having incidental rather than strong or evident appeal to minors.

## **Conclusion**

45. It is not uncommon for small craft brewers not to be ABAC signatories but all alcohol industry participants share a corporate and social responsibility to both serve and market alcohol in a manner consistent with community expectations. To assist small companies, the ABAC Scheme website contains a range of

resources free of charge to become familiar with the ABAC standards and their use in devising marketing materials. It would be both responsible and prudent risk management for the Company to avail itself of these materials.

46. The complaint is upheld in relation to the website entry describing the Maxo Relaxo product suggesting an improvement of mood (Part 3 (c)(i)) and dismissed in relation to the packaging of both products.